

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-97605; File No. SR-ISE-2023-10)

May 26, 2023

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Implementation of Certain Trading Functionality

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 17, 2023, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delay the implementation of certain trading functionality rule changes.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc. (“Nasdaq”) functionality, the Exchange filed various rule changes to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. At this time, the Exchange proposes to delay the implementation of the various rule changes. Each impacted rule change and the new implementation date is described below.

Impacted Rule Filings

The Exchange filed the following rule changes in connection with its technology migration:

- SR-ISE-2022-11 which impacts routing;<sup>3</sup>
- SR-ISE-2022-25 which amended ATR and Repricing Rules;<sup>4</sup>
- SR-ISE-2022-28 which amended Complex Order Rules;<sup>5</sup> and

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<sup>3</sup> See Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR-ISE-2022-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration).

<sup>4</sup> See Securities Exchange Act Release No. 96362 (November 18, 2022), 87 FR 72539 (November 25, 2022) (SR-ISE-2022-25) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ATR and Re-Pricing Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality).

<sup>5</sup> See Securities Exchange Act Release No. 96518 (December 16, 2022), 87 FR 78740 (December 22, 2022) (SR-ISE-2022-28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain ISE Complex Order Functionalities in Connection With a Technology Migration).

- SR-ISE-2023-06 a rule change amending multiple functionalities.<sup>6</sup>

The aforementioned rule changes (collectively “Impacted Rule Changes”) indicated that the technology migration for ISE would commence by Q4 2023 or prior to December 2023.

### New Implementation

At this time, the Exchange proposes to delay the implementation of the Impacted Rule Changes, which all relate to ISE’s upcoming technology migration, to a date prior to December 20, 2024. The Exchange will announce the initial migration date and symbol rollout schedule to Members in an Options Trader Alert.

The Exchange proposes to delay the migration to allow the Nasdaq GEMX, LLC (“GEMX”) migration<sup>7</sup> to complete and thereafter allow the Exchange and its Members additional time to prepare and test the new ISE functionality.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below. The Exchange proposes to delay the implementation of

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<sup>6</sup> See Securities Exchange Act Release No. 96818 (February 6, 2023), 88 FR 8950 (February 10, 2023) (SR-ISE-2023-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq, Inc. (“Nasdaq”) Functionality).

<sup>7</sup> GEMX’s migration will commence on November 6, 2023. See <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2023-4>. See also Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR-GEMX-2023-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

the Impacted Rule Changes, which all relate to ISE's upcoming technology migration, to allow the GEMX migration to complete<sup>10</sup> and thereafter allow the Exchange and its Members additional time to prepare and test the new functionality. The Exchange believes that the delay is consistent with the Act because the additional time will allow the Exchange to ensure a successful ISE migration while protecting investors and the public interest by allowing the Exchange and Members more time to prepare and test.

The Exchange notes that the substance of the impacted rules is not changing, only the implementation timeline is changing with this proposal.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the implementation of the Impacted Rule Changes does not impose an undue burden on competition. The proposed delay will allow the GEMX migration to complete<sup>11</sup> and thereafter allow the Exchange and its Members additional time to prepare and test the new functionality.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

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<sup>10</sup> See note 7.

<sup>11</sup> See note 7.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2023-10 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-ISE-2023-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to File Number SR-ISE-2023-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

J. Lynn Taylor,  
Assistant Secretary.

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<sup>14</sup> 17 CFR 200.30-3(a)(12).